

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CASE NO. 8:11CR421
Plaintiff,)
vs.)
OMAR CASTANON-RODRIGUEZ,)
Defendant.)

MEMORANDUM
AND ORDER

This matter is before the court for initial review of Filing No. 80, a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“§ 2255 motion”) filed by the Defendant, Omar Castanon-Rodriguez (“Castanon-Rodriguez”) pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015). Also before the Court is a Motion to Withdraw as Attorney (Filing No. 83) filed by the Federal Public Defender.

Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts requires initial review of a defendant’s § 2255 motion. Rule 4(b) states:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Omar Castanon-Rodriguez pleaded guilty to Count I of the Indictment charging him with conspiracy to distribute 5 grams or more of methamphetamine (actual). The parties entered into a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(B) in which they agreed that Castanon-Rodriguez should be held responsible for at least 20 but

no more than 35 grams of methamphetamine (actual), resulting in the application of base offense level 28. (Filing No. 59, ¶ 5.)

On September 17, 2012, Castanon-Rodriguez was sentenced to 110 months imprisonment and 4 years supervised release. (Filing No. 71.) The defendant did not file an appeal of his sentence.

On September 16, 2015, appointed counsel for Castanon-Rodriguez filed an Unopposed Motion to Reduce Sentence, seeking a reduction in sentence under Amendment 782 to the United States Sentencing Guidelines. (Filing No. 76) and Stipulation (Filing No. 77). On September 17, 2015, the Court reduced Castanon-Rodriguez's previous sentence from 110 months to 92 months (Filing No. 78).

The Federal Public Defender has reviewed Castanon-Rodriguez's case in connection with his pending § 2255 Motion; determined that the Defendant had no prior conviction that was used to enhance his sentence; and concluded that the *Johnson* decision is not applicable to his case. The Court has also reviewed the matter, including Castanon-Rodriguez's Presentence Investigation Report ("PSR") (Filing No. 67). The PSR reveals that the Defendant did not receive a sentencing enhancement due to a prior crime of violence.

THEREFORE, IT IS ORDERED:

1. The Court has completed initial review of the Defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 motion") (Filing No. 80);
2. The Court summarily denies the Defendant's § 2255 Motion;

3. A separate Judgment will be issued denying the § 2255 Motion;
4. The Motion to Withdraw (Filing No. 83) filed by the Federal Public Defender is granted; and
5. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 14th day of September, 2016.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge